

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

3XA WIRELESS, INC., an Illinois corporation,)	
and MOGO WIRELESS, INC., a Georgia)	
corporation,)	
)	
Plaintiffs,)	
)	
v.)	No. 08 CV 2867
)	
WILSON ELECTRONICS, INC., a Utah)	(JURY TRIAL DEMANDED)
corporation,)	
)	
Defendant.)	Judge Dow

**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTIVE RELIEF**

NOW COME Plaintiffs, 3XA WIRELESS, INC. (“3XA”) and MOGO WIRELESS, INC. (“Mogo”) (collectively “3XA and Mogo” and “Plaintiffs”), by and through their attorneys, MOMKUS McCLUSKEY LLC, and for their Emergency Motion for Temporary Restraining Order and Preliminary Injunctive Relief pursuant to Rule 65 of the Federal Rules of Civil Procedure against Defendant, WILSON ELECTRONICS, INC. (“Wilson” and “Defendant”), allege and state as follows:

1. In support of this Motion, Plaintiffs file contemporaneously herewith their Memorandum of Law in Support of their Motion for a Temporary Restraining Order and Preliminary Injunction (“Memorandum of Law”).
2. 3XA is the developer and MOGO is the manufacturer and distributor, of a certain easy-to-install, affordable, uni-directional dual-band wireless cellular signal amplifier that plugs into a car’s cigarette lighter. 3XA also developed a model that plugs into a computer’s USB port (hereinafter, “3XA/Mogo product”).
3. Defendant is a direct competitor of Plaintiffs and manufactures and distributes its

own wireless cellular amplifiers, antennas and accessories for use with cellular telephones.

4. Beginning no later than April 1, 2008, Defendant distributed at least two documents entitled "CONSUMER ALERT" which contained false and misleading statements concerning the 3XA/Mogo product, including that it was a fake, a fraud, negatively impacts the performance of a cell phone, is not properly designed, will harm the public, and is a detriment to public safety. These "CONSUMER ALERT" documents were distributed to actual and potential retailers and distributors of the 3XA/Mogo product. True and accurate copies of the CONSUMER ALERTS are attached to Plaintiffs' Memorandum of Law.

5. Upon notification to Wilson through its attorneys of these CONSUMER ALERTS and Plaintiffs' subsequent filing of this lawsuit, distribution of the CONSUMER ALERTS ceased to the best of Plaintiffs' knowledge and belief.

6. Subsequently, the parties agreed to enter into "good faith" settlement negotiations in early July, however, during these "good faith" negotiations, and as 3XA and MOGO awaited receipt of Wilson's counter-proposal on August 1, 2008, one of Wilson's CONSUMER ALERTS was again distributed and faxed from DAS, a distributor, to Phoenix, another distributor.

7. On August 4, 2008, in the face of a request by Wilson for an extension of time to answer the instant complaint, 3XA and MOGO requested that Wilson formally represent and confirm to them that Wilson had no involvement, either directly or indirectly, in the August 1, 2008 transmission of the CONSUMER ALERT from DAS to Phoenix.

8. On August 5, 2008, Wilson refused to make such a representation, and filed its Answer to the Complaint, in which it admitted that DAS was one of the distributors to whom Wilson published the CONSUMER ALERTs.

9. Wilson's CONSUMER ALERTs have resulted in delays and/or cancelations

of anticipated preliminary sales in excess of \$1,000,000.00 from anticipated orders of at least 19,300 units from retailers and distributors, including but not limited to DAS, Best Buy, Wal-Mart and RadioShack, the loss of profits and/or royalty fees associated therewith, and the loss of profits and/or royalty fees associated with anticipated subsequent and continuing orders from the various retailers and distributors

10. Plaintiffs require a temporary restraining order and preliminary injunction enjoining and restraining Defendant from any further transmission or distribution, either directly or indirectly, of the "CONSUMER ALERT" documents or any similar documents that contain false and misleading statements concerning the 3XA/Mogo product, including but not limited to, claims that the 3XA/Mogo product was a "fake," a "fraud," "negatively impacts the performance of a cell phone," "fools the user," "is not properly designed," that it causes the phone to reduce output power to the cell site "which results in no connection between the phone and the cell site," that it can "harm" cell phone performance, and that the product "hurts the public" and is a "detriment to public safety."

11. Plaintiffs seek this relief until a full hearing on the merits of their Complaint can be held. Without the issuance of a temporary restraining order, Plaintiffs will suffer irreparable harm to their clearly ascertainable rights to be free from improper unjustified interference with their right to conduct a lawful business, as the developer, manufacturer and distributor of the product at issue. Plaintiffs have no adequate remedy at law and have a substantial likelihood of success on the merits of their Complaint, which is incorporated herein by reference, as further discussed in their accompanying Memorandum of Law.

12. Finally, the irreparable harm Plaintiffs will suffer absent injunctive relief far outweighs any harm Defendant will suffer if the injunctive relief is granted and the entry of the relief requested will in no way disserve the public interest.

WHEREFORE, Plaintiffs, 3XA WIRELESS, INC. and MOGO WIRELESS, INC., respectfully move this Court to enter a temporary restraining order and an order granting preliminary injunctive relief, enjoining and restraining Defendant, and its respective agents, employees, attorneys and all other individuals or entities in active concert or participation with them from any further transmission or distribution, either directly or indirectly, of the “CONSUMER ALERT” documents, or any similar documents that contain false and misleading statements concerning the 3XA/Mogo product, including but not limited to, statements that the 3XA/Mogo product is a “fake,” that the 3XA/Mogo product is a “fraud,” that the 3XA/Mogo product “negatively impacts the performance of a cell phone,” that the 3XA/Mogo product “fools the user,” that the 3XA/Mogo product “is not properly designed,” that the 3XA/Mogo product causes the phone to reduce output power to the cell site “which results in no connection between the phone and the cell site,” that the 3XA/Mogo product can “harm” cell phone performance, that the 3XA/Mogo product “hurts the public,” and that the 3XA/Mogo product is a “detriment to public safety.” Plaintiffs additionally seek any and all other and further relief that this Court deems just and equitable.

Respectfully submitted,

Momkus McCluskey, LLC

By: /s/ Steven B. Ekker
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